

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
May 15, 2007 Session

STATE OF TENNESSEE v. ALECIA DIANE COOPER

**Appeal from the Circuit Court for Bedford County
No. 15916 Lee Russell, Judge**

No. M2006-02618-CCA-R3-CD - Filed August 14, 2007

The defendant, Alecia Diane Cooper, appeals her Bedford County Circuit Court jury convictions of attempt to commit assault, *see* T.C.A. §§ 39-13-101(a)(3) (2006) & 39-12-101 (2006), and disorderly conduct, *see id.* § 39-17-305, Class C misdemeanors. The convictions resulted from a confrontation between a security officer at the 2005 Tennessee Walking Horse National Celebration in Shelbyville and the defendant, who was a competitor and sponsor in the Celebration. On appeal, the defendant claims that the evidence was insufficient to support both convictions.

Tenn. R. App. P. 3; Judgments of the Circuit Court are Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and D. KELLY THOMAS, JR., JJ., joined.

Phillip L. Davidson, Nashville, Tennessee, for the Appellant, Alecia Diane Cooper.

Robert E. Cooper, Jr., Attorney General & Reporter; Benjamin A. Ball, Assistant Attorney General; Charles F. Crawford, District Attorney General; and Michael D. Randles, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

At trial, Rebecca Hord testified that she was a captain with the Bedford County Sheriff's Department and that she had worked for the department for 14 years. On August 31, 2005, she worked "off duty" as a security officer for Tennessee Walking Horse National Celebration. She and two other security officers were working in the "warm-up" and inspection area and had been instructed to address "some things [that had been] going on, . . . a bunch of people . . . in the warm-up area, security reasons, you know, safety issues."¹

¹ Although not abundantly clear from the record, we have gleaned from the testimony of the various witnesses that the inspection "ring" or "area" was a part of football-field sized, indoor arena. Horses participating in upcoming
(continued...)

When Ms. Hord arrived on the evening of August 31, 2005, she went to the inspection and warm-up building, where officials “had set up two tables for people to stop as they are coming in to make sure that it was a rider and there were . . . [no more than] four [people] per horse.” Between 6:30 and 7:00 p.m., Ms. Hord noticed the defendant, who was in riding attire, yelling at Marvinda Blackwell, one of the other security officers. Ms. Hord testified that, when she approached the two women, she heard the defendant tell Ms. Blackwell not to touch her. As Ms. Hord spoke to the defendant to diffuse the situation, the defendant walked off, and Ms. Blackwell said, “Just let her go on.” Ms. Hord testified that the defendant stood around in the warm-up arena, “just kind of looking around.” Then, the defendant came back toward Ms. Blackwell and Ms. Hord and said, “You just bring it on, you just bring it on.” Ms. Hord testified that neither she nor Ms. Blackwell spoke to the defendant.

Ms. Hord testified that the defendant then sat on a stoop but continued to “taunt” the security officers. Ms. Hord testified, “I couldn’t figure out what her problem was.” When a man walked up to the check-in table, the defendant came back to the table, “shove[d] past” Ms. Blackwell, and told the man that he could come into the warm-up area without stopping at the table. Ms. Hord testified that when Ms. Blackwell then informed the defendant that she could not re-enter the warm-up area, the defendant insisted she was re-entering and “shoved [Ms. Blackwell] into the table” with her hands. Ms. Hord testified that she then stepped in front of the defendant, who was “yelling and screaming.” Ms. Hord asked her to calm down and to go to the security office to resolve any problems. Ms. Hord testified that the defendant got “up in my face” and that, then, the two of them were “bumping each other.” When the defendant tried to push past Ms. Hord to re-enter the secured area, Ms. Hord put her “left hand on [the defendant’s] arm and then [] put [her] hand on her back and then [] pushed her [toward] the walkway that goes to the security office.” Ms. Hord testified that the defendant “snatche[d] away from [her], sp[un] around, and she [said she was] going back in that arena [and] showing her horse.” Ms. Hord testified that the defendant was getting “louder.” Ms. Hord testified that, at that point, “we’re actually yelling at each other and I’m telling her, ‘You need to be qu[iet].’” The two women were blocking the doorway to the warm-up arena.

Ms. Hord testified that the defendant then “takes her arm and she swings it and hits me across the chest and knocks me against the wall.” The defendant then started to enter the secured area. Ms. Hord “grabbed her and her vest bottoms popped off and [Ms. Hord] let go.” Ms. Hord grabbed the defendant again; they locked arms and wound up against the fence. The altercation caused “a scene to the point that there was no one going into the area. It was just packed with people.” A third security officer, Chris Brown, came to assist Ms. Hord. Ms. Hord told the defendant that she was under arrest, and then the defendant accompanied Ms. Hord to the security office.

¹(...continued)

shows would be brought into this arena, taken through inspection, and then would be saddled, groomed, and warmed up in the arena, which provided access to the show arena.

Marvinda Blackwell testified that, on August 31, 2005, she was employed by the Walking Horse Celebration as a security officer. She was assigned to the entrance of the inspection ring and warm-up arena and was instructed by the Celebration officials that a rider and as many as three other people could accompany a horse past the entrance tables into the arena. She was to admit no babies or women with open-toed shoes. She testified that a “big” posted sign announced the requirements for entering the inspection ring.

Ms. Blackwell testified that the defendant initially walked up and pushed her out of the way. Ms. Blackwell put out her open hand and asked whether the defendant had a horse in the ring. The defendant responded, “Don’t touch me, don’t you ever put your hands on me,” and Ms. Blackwell testified that the defendant went “crazy.” Based upon the defendant’s actions, Ms. Blackwell decided to “let her go,” but after the defendant entered the warm-up arena, she never approached a horse. Ms. Blackwell testified that the defendant, standing in the ring, gestured at Ms. Blackwell and Ms. Hord and yelled “Come on, y’all.” Then, the defendant sat on a concrete slab near the entrance tables and yelled phrases such as “Come on bitches” while she made come-here gestures with her hands and arms.

Ms. Blackwell testified that, when a man approached the table and was informed that he could not enter the inspection ring if he did not have a horse, he assented and began to leave; however, the defendant protested that the man could enter. The defendant “got up and walked out, pushed [Ms. Blackwell] out of the way, and walked out by the table to that guy, and she was bringing him back in.” Ms. Blackwell informed the defendant that she could not re-enter, but the defendant did not “acknowledge anything being said.” The defendant used her hands to push Ms. Blackwell into a table. Ms. Blackwell characterized the contact as offensive and described the defendant as “mad.” Ms. Blackwell testified that when the defendant pushed her a second time, Ms. Hord approached and tried to calm the defendant. The defendant kept getting “louder and louder,” and “then the next thing you know she done shoved [Ms. Hord].” Ms. Blackwell recounted that the incident “drew a big crowd.”

Carl Levy testified that he attended the 2005 Celebration as a “trader” and, shortly after 7:00 p.m. on August 31, 2005, he saw the defendant and Ms. Hord embroiled in an argument. The defendant was “very loud,” “very upset,” and “drawing attention.” Mr. Levy opined that Ms. Hord was “as kind as she could be” and was “very calm during the situation.”

Mark Thomas testified that, on August 31, 2005, he worked for the Walking Horse Celebration as an armed security guard. He testified that the Celebration officials instructed him that the security personnel had “to get control of what’s going on back [in the inspection ring and warm-up arena] . . . stand our ground, and do our jobs, and that was to get control of that inspection area to keep people from running in and out, especially people who did not belong.” Mr. Thomas saw the altercation when Ms. Hord held “her arms out and then [the defendant] insist[ed] on going in, [and] Ms. Hord kind of took her to the outside of the inspection area.” He testified that Ms. Hord tried to calm the defendant, but the defendant was loud and would not listen. Ms. Hord took the

defendant out to a fence between two brick columns and held “her in place there.” Mr. Thomas tried to keep the growing crowd at bay and radioed for security officer Chris Brown to render assistance.

John Wilson testified that he was the Designated Qualified Person for the 2005 Celebration. He was obliged to check horses and keep down the crowds in the arenas. On the evening of August 31, 2005, he was regulating the entry of horses into the inspection ring. He testified that he first saw the defendant that evening when she entered the ring with a horse, a groom, and a trainer. When she came out and tried to re-enter, the officers stopped her. The defendant claimed that her horse was inside, but there were already four people – the allowed number – with the horse to which she pointed. Mr. Wilson’s attention was diverted to other entrants, and when he turned back toward the defendant, she was pushing Ms. Hord. He affirmed that the defendant was screaming that she had to go back inside to show her horse.

Chris Brown served as the State’s last witness. He testified that he was regularly employed as a Bedford County deputy sheriff but worked part-time as a security officer with the Walking Horse Celebration. While working in the latter capacity on August 31, 2005, Mr. Brown was called via radio to assist Ms. Hord. When he arrived at the warm-up area, about 35 or 40 people encircled Ms. Hord and the defendant. He saw the defendant strike Ms. Hord. Ms. Hord took her by the coat or jacket and “placed her up against the wall.” The defendant was “very angry” and “cussing the whole time.” Ms. Hord and Mr. Brown took her to the security office.

Carole Rose testified for the defendant that she was a professional walking horse trainer, had participated in the Celebration since 1976, and knew the defendant. She testified that, on August 31, 2005, she was leading a mare through the warm-up area when she saw the defendant “jump through” a “little space” and said, “Don’t touch me, I’m going to show my horse.” Ms. Rose saw no security personnel.

Amanda Black testified that she was a student at Tennessee Technological University and married to a horse trainer in 2005. She recounted that, on August 31, she had an encounter with a security guard with blonde hair.² The guard resisted Ms. Black’s entry into the inspection area. Mr. Wilson, who knew Ms. Black to be a trainer’s wife, approved Ms. Black’s entry, but later Ms. Hord ordered Ms. Black to step back out of the warm-up ring, and Ms. Black complied. She called her husband by telephone to report that she could not get into the ring with the equipment she was carrying. Ms. Blackwell kept repeating that no one was getting into the ring and “just taunted and taunted.”

On cross-examination, Ms. Black admitted that she was “dressed up” for the Celebration, but she denied that she had been asked to leave the ring because of her shoes. Ms. Black denied that she had made “smart” comments to Ms. Blackwell.

²The State essentially conceded during cross-examination that the person described by Ms. Black was Marvinda Blackwell.

Charles Green testified that he was a horse trainer and had attended the 2005 Celebration. At the time, he trained horses for the defendant. On August 31, 2005, he had led the defendant's horse through the inspection and brought it back to his equipment cart by the entry door in the warm-up arena to prepare it for show. He testified that he heard a "confrontation" and discovered that the security people were not letting the defendant into the warm-up arena. He told the security people that the nearby horse was the defendant's. Ms. Hord told him to get out of the way or she would arrest him, as well. The defendant tried to enter the ring, and things "just kind of got out of hand. They started pushing her, . . . backed her up against the wall." Mr. Green testified "that the next thing I knew they had her slung up against the wall and ripped her vest." Mr. Green did not see the defendant strike Ms. Hord or Ms. Blackwell. He agreed that the defendant was upset but offered that she was being denied her long-awaited opportunity to compete in the walking horse championship.

The defendant testified that she was a registered nurse and a mother of three. She had entered five horses in the 2005 Walking Horse Celebration and was a corporate sponsor. She had two horses scheduled to show in the three-year-old, mare-gelding class on the evening of August 31. She testified that her trainer, Mr. Green, took one of the horses into the warm-up ring without her because she had to wait for someone to bring her riding coat. While waiting for the coat, she noticed Ms. Blackwell "being very confrontational, argument[at]ive, and taunting numerous people trying to get in." Numerous people pushed past her to enter the warm-up area. When the defendant's coat arrived, she donned and buttoned it and attempted to enter the warm-up area. Ms. Blackwell stopped her and told her she had to enter with a horse. She pointed inside to her horse, a gelding that was being attended nearby by Mr. Green and a groom, but Ms. Blackwell refused to let her enter. The defendant "put [her] hands on [her] arms and said, [']I'm going in['] and [she] walked past her." She testified that Ms. Blackwell tried to "grab" her, and the defendant told Ms. Blackwell not to touch her. The defendant then walked inside to the middle of the ring. She saw Ms. Blackwell pointing at her and talking to a male security officer. The defendant made a "What?" gesture to Ms. Blackwell but then turned and ignored her. She testified that it was "absolutely not true" that she taunted the security officers.

The defendant testified that, while she was sitting on a bench next to the horse that she was about to show, she unsuccessfully tried to telephone her nine-year-old daughter to assure herself that the child knew how to find the defendant's business partner, who was outside the warm-up arena with the child's clothes and event ticket. When the child did not answer, the defendant "had to leave to go out," having "totally forgotten this other incident." She walked out, talked to her business partner, and then tried to re-enter the ring.

At this point, she testified, Ms. Blackwell put her arms up and said that the defendant could not enter a second time. The defendant testified that it was then "absolute drop-dead time for me to ride my horse." Mr. Green had already warmed up the horse. As she protested to Ms. Blackwell, Ms. Hord grabbed her from behind, slung her around, and said, "You will not get in again[.] I'm going to teach you a lesson." The defendant testified that she yelled for Mr. Green, and a crowd started gathering. She testified that she "was very dramatic," pleading loudly to be allowed

to ride her horse. When Mr. Green affirmed that he was her trainer and that she was due to show her horse, Ms. Hord told him to be quiet or she would arrest him, too.

The defendant testified that Ms. Hord pulled her away from the ring and “slammed” her against the brick wall, held her with one hand, and put her elbow in the defendant’s chest, which “bruised [her] chest real bad.” The defendant testified that she also received bruises on her arms and her thigh. The defendant further testified that Ms. Hord tore the top two buttons off the defendant’s vest.

The defendant denied striking anyone that evening. She denied that she tried to escort into the ring a man who had been denied admission and testified that the prosecution witnesses’ references to the man amounted to a “fabrication.”

The defendant was charged in a four-count indictment as follows: Count (1), assault of Ms. Hord, *see* T.C.A. § 39-13-101(a)(3); Count (2), assault of Ms. Blackwell, *see id.*; Count (3) disorderly conduct based upon fighting, violent, or threatening behavior, *see id.* § 39-17-305(a)(1); and Count (4) disorderly conduct based upon obstructing a law enforcement officer from effecting a stop, frisk, halt, arrest, or search, *see id.* § 39-17-305(a)(2). The State voluntarily dismissed Count (4), and the jury acquitted the defendant on Count (2). The jury convicted the defendant of attempt to commit assault on Count (1) and of disorderly conduct on Count (3). In her appeal, the defendant challenges the sufficiency of the evidence on both convictions.

When an accused challenges the sufficiency of the evidence, an appellate court’s standard of review is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 324, 99 S. Ct. 2781, 2791-92 (1979); *State v. Winters*, 137 S.W.3d 641, 654 (Tenn. Crim. App. 2003). The rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. *Winters*, 137 S.W.3d at 654.

In determining the sufficiency of the evidence, this court should neither re-weigh the evidence nor substitute its inferences for those drawn by the trier of fact. *Winters*, 137 S.W.3d at 655. Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). Significantly, this court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Id.* at 835.

Assault as charged in Count (1) of the defendant’s indictment is committed by one who “[i]ntentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.” T.C.A. § 39-13-101(a)(3). An attempt to commit an offense includes a person acting, “with the kind of culpability otherwise required for the offense . . . [and] with intent to complete a course of action or cause a result that

would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.” *Id.* § 39-12-101(a)(3). Disorderly conduct as charged in Count (3) of the indictment is committed by one who, in a “public place and with intent to cause annoyance or alarm . . . [e]ngages in fighting or in violent or threatening behavior.” *Id.* § 39-17-305(a)(1).

The case before us presents classic issues of “she said/she said.” The State presented evidence that, if believed by the jury, adequately established the elements of both conviction offenses.

Ms. Hord testified that the defendant swung her arm and hit Ms. Hord “across the chest and knock[ed her] against the wall.” In our view, this testimony alone, if believed, was sufficient to establish the elements of offensive-contact assault.

The defendant argues in her brief that because the jury acquitted the defendant of the assault of Ms. Hord as alleged in Count (1), the jury necessarily rejected the factual premise that the defendant struck or offensively contacted Ms. Hord. The defendant essentially argues, therefore, that the conviction on the lesser included offense of attempt to commit assault cannot stand. We disagree. When “the evidence [is] sufficient to support [a] conviction [of] the greater offense charged, the defendant cannot complain of the jury finding [her] guilty of the lesser offense.” *McDonald v. State*, 512 S.W.2d 636, 640 (Tenn. Crim. App. 1974); *see also State v. Carrie Ann Brewster*, No. E2004-00533-CCA-R3-CD, slip op. at 4 (Tenn. Crim. App., Knoxville, Apr. 4, 2005). In the present case, the proof was sufficient to support a conviction of assault in Count (1); the verdict of attempt to commit the assault, which may itself be a dispensation to the defendant, is not self-impugning and does not entitle the defendant to relief.

The State also established the elements of disorderly conduct. If believed by the jury, evidence showed that the defendant, in a public place and in the presence of a number of people, was angry and very loud, made provocative gestures, cursed the security personnel, and struck or shoved one or both of the female security officers in an area “packed with people.” Witnesses commented that the defendant’s conduct elicited attention from the public and “drew a big crowd.” Again, if believed by the jury, the evidence established circumstantially that the defendant at least knowingly engaged in publicly annoying or alarming conduct.

We have qualified our references to adequate evidence by the phrase “if believed by the jury.” The crucible for resolving conflicts in the material facts is the trial court, not the appellate court. When the result of a case rests upon the resolution of disputed facts or the credibility of the witnesses, the opportunity to win – and the risk of losing – is essentially confined to that crucible. The appellate court will neither revisit the fact finder’s inferences drawn from the evidence nor make new credibility determinations. If the evidence in the light most favorable to the State establishes the elements of the conviction offenses, the appellate court must conclude that the evidence is legally sufficient. Such is the case before us.

Accordingly, we affirm the convictions.

JAMES CURWOOD WITT, JR., JUDGE